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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,170	10/18/2001	James M. Henderson		7805

7590 06/17/2003

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EXAMINER

NGUYEN, THUKHANH T

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 06/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/982,170

Applicant(s)

HENDERSON, JAMES M.

Examiner

Thu Khanh T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-13 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Ottman (4,153,404) in view of Smith (2,537,920).

Ottman discloses blocks forming apparatus comprising a front and rear cylinder (33, 43), a front and rear ram (30, 40), a feed chute (24), a charging chamber (48, 18), a mold chamber (18, Fig. 4), and a support frame (14, 16); wherein the feed chute is continuously charged (Figs. 1-4) and the charging chamber functions as a measuring and shaping device prior to the compressing of the rams (col. 3, 46-65); wherein the solid top of the rear ram functions as a shut off valve (26, 50; col. 2, lines 55-64); wherein the rear ram (40) and the front ram (30) and the supporting frames (14, 16) form a square cavity and compress the charging material in one axis, in both the positive and negative direction of the axis. Ottman, however, fails to disclose an indexing plate and a mixing means.

Smith discloses an apparatus for forming granular material into blocks, comprising an indexing plate (33) for receiving and transporting the blocks after they are formed in the molding cavity, and slice bars (29) for agitating the material to insure its free flow downwardly into the molding chambers (col. 2, lines 34). The apparatus further comprises a plurality of mold

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chambers (col. 2, lines 36-37; Fig. 4), thus, the indexing plate is capable of holding and transporting a plurality of formed blocks at the same time. The dimensions of the indexing plate as well as the distance between the front and rear ram are dependent on the operating space and the size of the blocks.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify Ottman by providing an indexing plate and a mixing means as taught by Smith, because the indexing plate would support the blocks after being formed and transfer the blocks to other places for further handling and preparation, and the mixing means would mix and facilitate the movement of the material from the hopper to the molding chamber.

Response to Arguments

3. Applicant's arguments filed April 21, 2003 have been fully considered but they are not persuasive.

The Applicant argued that Smith ('920) does not disclose an indexing plate for transporting the formed blocks. The Examiner respectfully disagrees. Smith discloses that,

“When the plate 16 has been lowered to the position in which plate 17 is shown at the right of Figure 1, the cylinder 28 is operated to move the rams further to the left, thereby ejecting the blocks formed in the mold chambers onto the edge of the table 10 from whence they move step by step on successive operations, to an apron plate 33 extending laterally from the edge of the table.” (col. 3, lines 28-37)

Thus, the formed blocks are moved ***step by step*** onto an apron plate 33 at the end of the mold cavity. The Merriam-Wester's Collegiate Dictionary – 10th Edition- has defined an apron is

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“something that suggests or resembles an apron in shape, position, or use, as an endless belt for carrying material.” Therefore, the examiner strongly believes that the apron plate 33, for transporting the formed blocks, is the same or equivalent to the indexing plate.

The Applicant further alleged that none of the references “teaches the use of an indexing plate or mixing means as disclosed in the present invention” (emphasis added). However, the claims are apparatus claims, and they have to describe a structural limitation that is different from the prior art in order for the claims to be patentable. The intended use of the apparatus does not render the patentability of the claims. “[A]pparatus claims cover what a device *is*, not what a device *does*.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). Also while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both Ottman and Smith are related to a press apparatus for forming blocks from granules or particles material. Therefore, it would have been obvious for one of ordinary skill in the art who searches Ottman would also look into Smith.

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Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

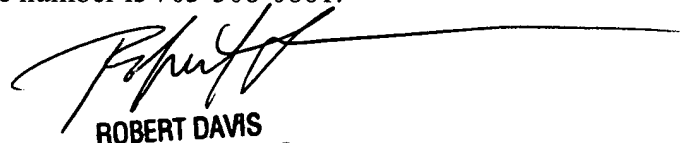
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 703-305-7167. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

TN
June 12, 2003


ROBERT DAVIS
PRIMARY EXAMINER
GROUP 1300/1700
6/13/03